IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5352 of 2004

Between:

C.Balakrishna, s/o late C.Yethirajulu, Daily Coolie,

D.No.10-41, Ponnakalva Street, Tiruchanoor Village & Post,
Tirupati Rural Mandal, Chittoor District.

..... PETITIONER

AND

1 The Mandal Revenue Officer, Tirupati Rural Mandal,

Tirupathi, Chittoor District.
2 The Mandal Revenue Inspector, Tirupati Rural Mandal,

Tirupathi, Chittoor District.
3 The Sarpanch, Tiruchanoor Gram Panchayat,

Tirupati Rural Mandal, Tirupati, Chittoor District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or orders or direction or directions or a writ more particularly one in the nature of writ of mandamus declaring the action of the respondents in alienating/assigning the petition schedule land to third parties is illegal, arbitrary, malafide and violation of principles of natural justice and consequentially direct the respondents not to alienate/assign the petition schedule land to any third parties in the interest of justice.

SCHEDULE

Dist:Chittoor Chandragiri tq., Tiruchanoor (V)

House bearing No.10/41/1, Ponnakalva Street, Tiruchanoor Village and vacant site situated in S.No.433 of Tiruchanoor Gram Panchayat within the following prescribed boundaries.

NORTH; KONETI KALVA

EAST: VACANT SITE OF CHINTAGUNTA NAVARAJU

SOUTH:DEITY'S PATH NEAR PONNAKALVA MANDAPAM

WEST: TALAKASAM KALVA

Counsel for the Petitioner : MR.A.CHANDRAIH NAIDU

Counsel for Respondent Nos.1 & 2 : GP FOR REVENUE

Counsel for Respondent No.3 : None appeared.

The Court made the following :

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O R D E R :

The petitioner claims that his father purchased an extent of Ac.1-00 of land in Survey No.433 of Tiruchanur village on
9-1-1980 from one P.K.Munikrishna Pillai, where allegedly he constructed a house bearing No.10/41/1. The petitioner states that he is regularly paying Property Tax to Tiruchanur Gram Panchayat. He alleges that on instructions from the Mandal Revenue Officer, Tirupati Rural Mandal, first respondent herein, the second respondent visited the petitioner's land on 9-3-2004 for conducting survey for the purpose of alienating the land to third parties. The petitioner approached the Mandal Revenue Officer as well as the Revenue Divisional Officer for redressal, in vain. Therefore, he filed the writ petition seeking writ of mandamus declaring the action of the respondents in alienating/assigning the land comprised in Survey No.433, as illegal and arbitrary, and for a consequential direction to the respondents not to alienate/assign the land, which is allegedly in possession of the petitioner.

This Court, while admitting the writ petition on 23-3-2004 directed the respondents to maintain status quo with regard to possession. Respondents 1 and 2 moved this Court for vacating the interim orders by filing W.V.M.P.No.1997 of 2004. As a short question is involved, the matter was heard finally at interlocutory stage with the consent of the parties.

In the counter affidavit filed along with vacate stay petition, the allegations made by the petitioner that the respondents are going to assign/alienate the land in favour of third parties is denied. The allegation of the petitioner that he is in possession of the land in Survey No.433 is also denied and the further allegation that the petitioner is in possession of Door No.10-41 is also denied stating that as per multi-purpose Household Scheme (MPHS) data of Tiruchanur village Door No.10-41 stands in the name of Smt.B.Jyothamma and that the petitioner is not in possession of the property. It is further stated that the land in Survey No.433 admeasuring Acs.5-14 is classified in the Revenue records as *Kalva Poramboke* and that it is in possession of the Government and that the petitioner filed the writ petition merely on speculation, though he is not in possession of the land.

A reply affidavit is filed asserting that petitioner is in possession of the land. However, there is no denial that the house bearing No.10-41 stands in the name of Smt. B.Jyothamma. The petitioner further alleged that Smt. B.Jyothamma purchased the constructed house from his father, which is adjacent to the house of the petitioner, which is allotted a new Door No.10-41/1.

The learned counsel for the petitioner submits that the petitioner's father purchased the land, and therefore, the Mandal Revenue Officer is not competent to assign the patta land. Alternatively, he submits that the land is situated in Tiruchanur village Gram Panchayat, and therefore, it is the Gram Panchayat only, which can take any action with regard to the land. Lastly, the learned counsel would submit that when the petitioner is in possession of the land, without following the due process of law, the respondents could not have initiated any steps for assigning the land. The learned counsel relied on various receipts allegedly issued by the Gram Panchayat.

Per contra, the learned Assistant Government Pleader for Revenue (General) refused these contentions and submits that the writ petition is filed on mere apprehension and there is no move on the part of the Mandal Revenue Officer to assign the land in Survey No.433, which is registered as *Kalva Poramboke*. He also submits that the *Kalva Poramboke* being a water course cannot be assigned to anybody.

As rightly pointed out by the learned Assistant Government Pleader, the writ petition is filed on mere apprehension. Further, after perusing the tax receipts dated 31-3-1982, 2-3-1988,
18-5-1990, 31-3-1992 and 31-3-2004 it is not possible to accept the contention of the learned counsel that the petitioner is in possession of the property. The learned counsel for the petitioner also invited the attention of this Court to the electricity bills

dated 18-7-1996 and 17-10-1996 in support of the contention that he is in possession of the property. These electricity bills show that they are issued in relation to house bearing No.10-41 of Thanapally village. Further, they relate to 1996 and this would not lead to any inference that the petitioner was in possession of the property as on the date of filing of the writ petition. Therefore, prima-facie the contention of the Government that he is not in possession is correct. However, if the petitioner is in possession of the property and he has to be dispossessed, it is needless to point out that the Revenue officials have to issue notice to the petitioner before he is evicted. It is made clear that the land being *Kalva Poramboke*, the respondents shall not alienate/assign the land to anybody.

The writ petition, with the above observations, is dismissed. No costs.

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(V.V.S.RAO, J.)

21-09-2004.

Msr.

SPECIAL OFFICER

// TRUE COPY //

SECTION OFFICER

To

1 The Mandal Revenue Officer, Tirupati Rural Mandal,

Tirupathi, Chittoor District.
2 The Mandal Revenue Inspector, Tirupati Rural Mandal,

Tirupathi, Chittoor District.
3 The Sarpanch, Tiruchanoor Gram Panchayat,

Tirupati Rural Mandal, Tirupati, Chittoor District.

4. 2CCs to Government Pleader for Revenue,

High Court Buildings, Hyderabad.(OUT)

5. 2CD copies

HON’BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.5352 of 2004

21-09-2004.

(Msr)